

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
Asheville Division**

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|---------------------------------|---|-------------------------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| v. |) | Criminal No. 1:07cr122 |
| |) | |
| BOBBY LEE MEDFORD |) | |
| GUY KENNETH PENLAND |) | |

ORDER

The matter is before the Court on defendants' motion to sever their joint trial on various grounds, including defendant Medford's suggestion that the government will seek to introduce an admission by defendant Penland that would inculcate defendant Medford in violation of *Bruten v. United States*, 391 U.S. 123 (1968). It is unclear from both defendants' motions and the government's response what, if any, statements by Penland to law enforcement agents the government seeks to introduce at trial that would implicate *Bruten*.

Defendants also seek severance on the ground that defendant Penland's exculpatory testimony is necessary to defendant Medford's defense but would be unavailable in a joint trial. *See United States v. Reaves*, 48 F.3d 763, 767-68 (4th Cir. 1995). It is unclear from the pleadings whether defendant Penland has indicated an intent to testify should the trial be severed.

Accordingly, and for good cause,

It is hereby **ORDERED** that the government is directed to file by 12:00 p.m. Friday, March 21, 2008, a list of any statements or confessions by defendant Penland that the government intends to introduce at trial that implicate or inculcate defendant Medford and hence might require redaction or otherwise implicate *Bruten*.

It is further **ORDERED** that defendants are directed to file by 12:00 p.m. Friday, March 21,

2008, assurance that defendant Penland will testify should the defendants' motion be granted and the trial severed.

The Clerk is directed to send a copy of this Order to all counsel of record.

/s/

Alexandria, VA
March 20, 2008

T. S. Ellis, III
United States District Judge